Supreme Court, U.S.
FILED
AUG 31 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2) (2) (2)

NOS. 88271, 88272, 88273

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

SYVASKY LAFAYETTE POYNER,
Petitioner,

v.

TONI V. BAIR,
Respondent.

BRIEF IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI

MARY SUE TERRY
Attorney General of Virginia

* RICHARD B. SMITH
KATHERINE B. TOONE
Assistant Attorneys General of Virginia

* *Counsel of Record*

Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-4624

Appellate Printing Services • Heritage Bldg. • 10th & Main • Richmond, VA 23219 • (804) 643-7789

QUESTION PRESENTED

SHOULD THIS COURT EXERCISE ITS CERTIORARI POWER TO REVIEW ISSUES WHICH, ALTHOUGH PRESENTED TO THE COURT BELOW, WERE NOT CONSIDERED ON THEIR MERITS BECAUSE THEY WERE FOUND TO BE PROCEDURALLY BARRED BY VIRGINIA LAW, A RULING THAT POYNER DOES NOT CHALLENGE?

REASONS FOR DENYING THE PETITION

Poyner presents five questions to this Court for certiorari review dealing with the admission into evidence of his confession to five murders in his three separate trials in the following Virginia circuit courts: Newport News, Hampton, and Williamsburg & James City County. His questions I, II, III, and V were raised at trial and on direct appeal three years ago and found meritless by the Virginia Supreme Court. *Poyner v. Commonwealth,* 229 Va. 401, 329 S.E.2d 815 (1985). That opinion, however, is *not* at issue here and, in fact, this Court has already denied certiorari review on direct appeal. *See Poyner v. Virginia,* 474 U.S. 865 (1985) (Newport News and Williamsburg); *Poyner v. Virginia,* 474 U.S. 888 (1985) (Hampton).

Poyner then filed separate habeas corpus petitions in the three state circuit courts. He again raised his issues I, II, III, and V and asserted issue IV for the first time. The state circuit courts never reached the merits of these claims because they were found to be procedurally barred from state habeas corpus review by the rules of *Brooks v. Peyton,* 210 Va. 318, 171 S.E.2d 243 (1969) (habeas corpus is not a substitute for direct appeal in Virginia), *Slayton v. Parrigan,* 215 Va. 27, 205 S.E.2d 680 (1974), *cert. denied,* 419 U.S. 1108 (1975) (claims not raised at trial and on appeal are not cognizable in Virginia habeas corpus), or *Hawks v. Cox,* 211 Va. 91, 175 S.E.2d 271 (1970) (repetitious claims previously adjudicated in state or federal court not cognizable in Virginia habeas corpus).

The substantive merits of the questions that Poyner presents were not reached by either the state habeas courts or the Virginia Supreme Court. The *only* issue that Poyner could therefore raise here at this time is whether the Virginia Supreme Court correctly affirmed the state habeas courts' application of Virginia procedural law as barring these claims. Poyner, however, does not challenge this ruling. Instead, he simply ignores the procedural bars and presents his substantive claims.

Rule 17.1 of the Rules of the Supreme Court provides that the writ of certiorari "will be granted only when there are special and important reasons therefor." Subsections (b) and (c) of Rule

17.1 make clear that certiorari review is appropriate only for state court decisions involving matters of federal law.

In the case at bar, the state habeas courts and the Virginia Supreme Court expressly relied only on state law in their decisions dismissing Poyner's claims, rulings which Poyner does not challenge. No federal question was entertained. This Court therefore lacks jurisdiction to review Poyner's substantive claims. *See Michigan v. Long,* 463 U.S. 1032 (1983); *Herb v. Pitcairn,* 324 U.S. 117, 125-26 (1945).

CONCLUSION

There are no special or important reasons in this case for this Court's review; neither is there a federal question at issue. The respondent therefore prays that this Court will deny the petitions for a writ of certiorari.

Respectfully submitted,

Toni V. Bair,
Respondent herein.

Mary Sue Terry
Attorney General of Virginia

Richard B. Smith
Assistant Attorney General

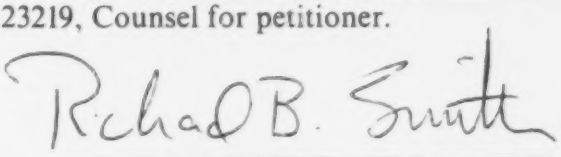
Katherine B. Toone
Assistant Attorney General

Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Counsel for the respondent.

CERTIFICATE OF SERVICE

I, Richard B. Smith, a member of the Bar of this Court and Counsel for respondent, hereby certify that I have this 30th day of August, 1988, served this Brief in Opposition to Petitions for a Writ of Certiorari upon the petitioner by causing three copies of such document to be mailed to Alexander H. Slaughter, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219, Counsel for petitioner.



Richard B. Smith
Assistant Attorney General